

GREENWOOD COMMON COUNCIL  
FEBRUARY 20, 2006 MINUTES  
PAGE 1

Mayor Charles Henderson called the meeting to order at 7:00 p.m.

The audience recited the Pledge of Allegiance in unison, after which Rev. Dane Sinn of the Smith Valley Baptist Church led in prayer.

PRESENT: Council members Bruce Armstrong, Ron Bates, William Bless, Ron Deer, Keith Hardin, Jessie Reed; Mayor Henderson; Clerk-Treasurer Jeannine Myers; and City Attorney Shawna Koons-Davis.  
Councilman John Gibson was absent.

Mr. Bates moved to approve the minutes of the regular session of February 6<sup>th</sup>. Second was by Mr. Hardin. Vote: Ayes.

The City Attorney had distributed her litigation report. There were no questions from the Council.

Mr. Hardin reported that the Plan Commission approved the site plan for O'Reiley Auto Parts and approved the Rock Lane Ridge Subdivision rezoning. The Indiana American Office Parke site plan was also approved. Aldi's is applying for a waiver to not put in sidewalks. Mr. Hardin indicated that the Planning Department is preparing information to prepare an ordinance to develop boulevards, with the specific interest in Main Street east of I-65, but in other areas also.

The Mayor reported for Mr. Gibson that the Solid Waste Board set the salary for the new director at \$42,500 – lower than the salary of the outgoing director because of experience, etc. with a review every six months. The Board also received the vehicle that had been approved in their budget and are getting it licensed and ready for service.

ORDINANCE No. 05-38 – An Ordinance Annexing Certain Territory Contiguous to the City of Greenwood, Indiana, Placing the Same Within the Corporate Boundaries Thereof and Making the Same a Part of the City of Greenwood and Redefining the Corporate Boundaries of the City of Greenwood, Indiana, Approximately 92.186 Acres Located Southwest of the Intersection of County Road 700 North and County Road 125 West, and Commonly Known as the Clark Pleasant Community School Corporation Property. Counsel noted that the advertisement for the public hearing did not appear in the paper in time, so at her recommendation Mr. Hardin moved to postpone first reading until the March 20<sup>th</sup> meeting. Second by Ms. Reed. Vote: Ayes. **POSTPONED FOR FIRST READING AND PUBLIC HEARING UNTIL MARCH 20, 2006 MEETING.**

ORDINANCE No. 06-05 – An Ordinance Amending Chapter 8, Article 4, Sec. 8-20, of the Greenwood Municipal Code (1993), As Amended, to Prohibit Parking on Public Paths and Trails and on the Area Between the Street and Any Public Sidewalk, Path or Trail Within the City of Greenwood. Ms. Koons-Davis had prepared an amendment at the Mayor's request. Mr. Bless moved to amend Ordinance No. 06-05 as follows:

In Section 1 (e) by adding the following language after the word "trail." "Provided, however, that the area of a drive or driveway between the street and a sidewalk, path or trail is exempt from the regulation." Second by Mr. Bates. Vote: Ayes. **AMENDED.** Mr. Deer moved to pass Ordinance No. 06-05, as amended, through first reading. Second by Mr. Bates. Vote: Ayes. **PASSED FIRST READING AS AMENDED.**

ORDINANCE No. 06-06 – An Ordinance to Amend Greenwood Common Council Ordinance Nos. 89-65 and 03-52, and Greenwood Municipal Code (1993), As Amended, Chapter 2, Article 8, Sec. 2-68(g)(3), to Clarify the Compensation Rate

GREENWOOD COMMON COUNCIL  
FEBRUARY 20, 2006 MINUTES  
PAGE 2

of Employees Who Work Both an Actual and Recognized Holiday in Operations Not Staffed Seven (7) Days a Week. Mayor Henderson apologized to the Council for not finalizing the matrix that Mr. Hardin had requested and said it would be ready by the next meeting. Mr. Hardin moved to postpone first reading until March 6<sup>th</sup>. Second by Mr. Bates. Vote: Ayes. **POSTPONED FOR FIRST READING UNTIL MARCH 6, 2006 MEETING.**

RESOLUTION No. 06-04 – A Resolution of the Greenwood Common Council to Join the Central Indiana Regional Transportation Authority. Mr. Hardin moved to pass Resolution No. 06-04 through first reading. Second by Mr. Deer. The Mayor reiterated that Fishers, Noblesville, Carmel and Greenwood collectively pick one representative. The County Commissioners choice is the only voice right now for Johnson County, he added, and Mayor Henderson would like to see more representation south of U.S. 40. Mr. Deer urged that Greenwood join so that the other communities can move forward. Vote: Ayes. **PASSED FIRST READING.**

ORDINANCE No. 05-33 – An Ordinance Annexing Certain Territory Contiguous to the City of Greenwood, Indiana, Placing the Same Within the Corporate Boundaries Thereof and Making the Same a Part of the City of Greenwood and Redefining the Corporate Boundaries of the City of Greenwood, Indiana, Approximately 4 Acres Located on the Southwestern Corner of Stella Drive and State Road 135, Commonly Known as the Waltz Property. **SECOND READING POSTPONED UNTIL MARCH 20, 2006 MEETING.**

ORDINANCE No. 06-02 – An Ordinance to Amend the Official Zoning Map Adopted by Reference in Zoning Ordinance No. 82-1 Entitled “An Ordinance Establishing Comprehensive Zoning Regulations For the City of Greenwood, Indiana, and Providing for the Administration, Enforcement, and Amendment Thereof, In Accordance With the Provisions of I.C. 36-7-4-600 et seq. Laws of Indiana As Amended, and For the Repeal of All Ordinances in Conflict Herewith” (Proposed Rezoning of lot Nos. 3 through 17 in the Suburban Acres East Section Subdivision). Mr. Bates moved to pass Ordinance No. 06-02 through second reading. Second was by Ms. Reed. Vote: Ayes. **PASSED SECOND READING.**

ORDINANCE No. 06-03 – An Ordinance Amending Greenwood Municipal Code (1993), As Amended, Chapter 6, “Safety Departments and Regulations,” Article 10, “Specific Activities Regulated For the Public’s Health and Safety”, to Add a New Section to Adopt Regulations Prohibiting Smoking in Certain Public Places and Places of Employment. At this time Mr. Bates introduced letters of support from Phyllis Gentle RN and Lauren Perry (in attachments of this meeting). Mr. Deer moved for a thirty-day continuance. Mr. Armstrong seconded. Vote: Aye – Deer; Nays – Armstrong, Bates, Bless, Hardin, Reed. Motion failed. Ms. Reed moved to pass Ordinance No. 06-03 on second reading. Second by Mr. Bates. Mayor Henderson told the audience that after the Council dealt with any amendments they might have, he would allow about ten minutes of discussion for each side, hopefully restricted to those that live, own a business or work inside the City and not repeat what was brought up at the last meeting. He said he would allow comments by one person from each side who is from outside the City.

Mr. Hardin presented an amendment to Section (h), 3, (i) where it mentions vehicles with more than one occupant to mean only vehicles owned by the City of Greenwood. Mr. Armstrong wanted to strike “more than one occupant”. Mr. Hardin agreed. Second by Armstrong. Vote: Ayes. **AMENDED.**

Under Section (k) "Enforcement", 3 Mr. Hardin moved to include under those authorized to issue warnings the Code Enforcement Officer and designated members of the Fire Department. Second by Ms. Reed. Mr. Hardin explained that he would like these employees to assist the Police Department in enforcing the ordinance when necessary, although complaints would naturally go to the Police Department first. Fire Chief Dhondt clarified that there is a group of five that have been sworn in by the Judge to enforce Code violations in the City. Mr. Deer thought that enforcement personnel should be put in the budget and the enforcement of this ordinance should not be left to the Police. He mentioned that the commonality he found in communities where there was a smoking ban is that it was enforced by the health department. Mr. Hardin reiterated that his amendment would put more people at the disposal of the Mayor to enforce the ordinance if necessary. Mayor Henderson commented that the health department could not enforce a City ordinance. The City Attorney agreed. The Mayor said the word "shall" in issuing warnings and citations means that those sworn personnel are the ones to enforce the ordinance; they still have discretion and do not have to cite. Mayor Henderson said he believes that this discretion will help bring about voluntary compliance. The Mayor commented that he believes that he does not want our City to be involved in a County ordinance if they pass one, as he thinks the City should make decisions instead of the County. Vote: Ayes. **AMENDED.**

Under Section (l), Violations and Penalties, Mr. Hardin wanted to put the burden of enforcement on the business owners instead of sworn personnel, and in discussion with the City Attorney he said it was suggested that paragraph 3 be removed, which makes it unlawful to smoke in any area where smoking is prohibited by the provisions of this Section. Mr. Hardin moved to strike this paragraph as described above. Second by Mr. Bates. It was clarified that the business, not the individual, would be subject to a fine of \$50 for the first violation, as described in paragraph 4, (A). Council members Reed and Armstrong thought the individual in violation should be fined. In response to Mr. Hardin, the City Attorney said these are infractions that carried fines, not criminal penalties. Mr. Deer stated that his national research indicates that one of the most common ways of enforcing this ban is holding the owner of the establishment of controlling the behavior of patrons in his establishment or place of employment. Ms. Reed told the Council that she thought reading the entirety of Section (l) covered everything that had been discussed. Mr. Hardin withdrew his motion and Mr. Bates withdrew his second.

Per the City Attorney's memo, Ms. Reed moved to amend Ordinance No. 06-03 as follows:

In Section 1(a)(2) the definition of "Bar" by deleting it in its entirety and replacing it with the following language:

2. "Bar" means an establishment where at least fifty-one (51%) of gross receipts are derived from the sale of alcoholic beverages for consumption on the premises by guests who must be at least twenty-one years of age to enter the premises, including but not limited to pubs, taverns, nightclubs, cocktail lounges, and cabarets. The establishment may also give, serve, or provide food to those guests; however, where there exists any part, portion, or area on the premises that allows for guests who are not at least eighteen (18) years of age to enter the premises, that establishment is not a "bar" for the purposes of this Article.

Second by Mr. Hardin. Police Chief Joe Pitcher discussed his concern of the proposed amendment to the definition of a "bar" which is based on at least 51% of gross receipts being derived from the sale of alcoholic beverages. He told the Council that his department is not set up to know if the establishment meets that

criteria. Chief Pitcher recommended deleting the percentage of gross receipts derived from the sale of alcoholic beverages and using in the definition of a “bar” as “an establishment that serves alcoholic beverages for consumption on the premises by guests who must be at least twenty-one years of age to enter the premises, including, but not limited to pubs, taverns, nightclubs, cocktail lounges, and cabarets.” Mr. Deer wondered if a guest had to be twenty-one years of age to be on the premises. Ms. Koons-Davis said she would have to check it out. Ms. Reed had no objection but mentioned restaurants having to apply for a liquor license. Debbie Swinehamer of the Johnson County Board of Health mentioned requirements that they would like to put on annual restaurant applications, which would include an owner or manager certifying from where the majority of the sales are derived. Ms. Reed withdrew her motion and moved to insert the Chief’s recommendation in its place. Mr. Armstrong seconded. Ms. Koons-Davis suggested that the ordinance could be passed with this definition and refined later if necessary. Bar owner Jim Johnson told the Council that if anyone less than twenty-one years of age were in his bar, he could be fined \$500 even if he were not serving them. A Franklin resident said that underage patrons were in bars in that community. Mr. Hardin agreed that the City Attorney should investigate State law further so that the definition could be refined if necessary. Vote: Ayes – Hardin, Reed, Armstrong, Bates, Bless; Nay – Deer. **AMENDED.**

Mr. Deer then moved to amend Ordinance No. 06-03 by keeping all provisions that refer to public-owned property and any other privately owned property or business would have to post “smoking” or “non-smoking”. Second by Mr. Armstrong. Mr. Deer discussed the definitions of “public” and “private” and his internet research. He noted that if an educated, informed public could make an informed decision before accepting employment or consume the goods or services or an establishment, they can choose to enter or not enter; and this would solve the issues under discussion for this ordinance. Vote: Aye – Deer; Nays – Hardin, Reed, Armstrong, Bates, Bless. Motion fails.

Mr. Deer next moved to exempt bars in bowling alleys. Second by Mr. Bless. Vote: Ayes – Bless, Deer; Nays – Reed, Armstrong, Bates, Hardin. Motion fails.

Mayor Henderson brought up the issue of outdoor seating and a reasonable distance of 25 feet outside an enclosed area where smoking is prohibited.

Mr. Deer moved to exempt any business with five or fewer employees. Second by Mr. Armstrong. Mr. Deer again cited his national research, saying using that number would take care of most small businesses. Vote: Aye – Deer; Nays – Armstrong, Bates, Bless, Hardin, Reed. Motion fails.

Mr. Deer moved to hotels and motels have rooms designated as smoking rooms, not limited by an artificial percentage, but market driven. Second by Mr. Bates. Vote: Aye – Deer; Nays – Bates, Bless, Hardin, Reed, Armstrong.

Those in opposition were invited to speak, with Mayor Henderson reminding them that only one person who spoke last week and one from outside the City should come forward. Kevin Vance told the Council that it should be their role to enact laws when there is clear harm being done to the public and the status quo. He contended that this burden has not been met. Mr. Vance gave statistics from various medical journals and stressed short recovery times after being exposed to second-hand smoke.

John Long was next and mentioned SUV’s and RV’s polluting the air. He objected to a law telling people what they could do and thought a sign on the door of a business would be enough to help a person decide if he wanted to enter.

GREENWOOD COMMON COUNCIL  
FEBRUARY 20, 2006 MINUTES  
PAGE 5

Elmer James, a non-smoker, is opposed to the ordinance and thought that signs designating smoking and non-smoking areas should be enough. He warned the Council, too, that revenues would be down.

Another resident, Dean Henson, said he is willing to be a non-smoker. But he thought smokers have a choice in this issue. He told the Council that regulating the area of liquor would make a big difference. Mr. Henson said that businesses should not be forced into anything.

Kwang Casey thought there were a lot of unsolved issues in the ordinance and discussed his objections to some of the exemptions.

Teresa Segal of White River Township was last to speak for those opposed. She said that the Council is sincere in its effort to protect its citizens' health but is taking away the rights of individuals by forcing this ban. She wondered if all the signatures on the petition of those in favor of the ordinance were from Greenwood residents. Ms. Segal thought that the public had a right to vote on this by referendum. Mayor Henderson clarified that all the signatures on the petition were not from Greenwood and this issue does not qualify for a referendum according to State statute. Mr. Deer then submitted a petition of those opposed and said he has been informed that the majority of those who signed are Greenwood residents and more are coming. Currently there are 1,425 names. Mr. Armstrong said the number for the smoke-free work-place was 1,687.

John Ault, chairman of Partnership for a Healthier Johnson County, spoke in favor of this ordinance. He stressed that individuals have a right to a safe, healthy work environment. Mr. Ault gave statistics for second-hand smoke and health care costs. Mr. Ault also gave statistics on income for businesses after initiating a smoking ban.

Resident Brian Lowe also focused on rights – of the non-smoker. He asked the Council to make a decision that will not be infringing on anyone's rights but will be protecting the rights of individuals who are concerned about their health.

Jane Adcock described her experience as a peer counselor in "Project Self-Sufficiency" where she worked with people who were on public welfare. Many of these people worked in smoke-filled establishments – mostly for tips and minimum wage – and did not have the luxury of insurance.

Don Cummings spoke in favor of the ordinance and said he believes in personal freedom. Business owners have an obligation to offer a safe and healthful workplace, he noted.

Mr. Deer told the Council that he had requested a continuance because those who are opposed to the ordinance have not had the time to dialog with those who are in support of it to see if there is a common ground. He moved again for a continuance. Motion dies for lack of a second. Mr. Hardin called for the question. Vote: Ayes – Bless, Hardin, Reed, Armstrong, Bates; Nay – Deer. Roll call on Ordinance No. 06-03 as amended: Ayes – Hardin, Reed, Armstrong, Bates, Bless; Nay – Deer. **ORDINANCE No. 06-03 PASSED SECOND READING AS AMENDED.**

The Council recessed at 9:00 p.m. and reconvened at 9:15 p.m.

ORDINANCE No. 06-07 – An Ordinance to Amend the Official Zoning Map Adopted by Reference in Zoning Ordinance No. 82-1 Entitled "An Ordinance Establishing Comprehensive Zoning Regulations For the City of Greenwood,

Indiana, and Providing For the Administration, Enforcement, and Amendment Thereof, In Accordance With the Provisions of I.C. 36-7-4-600 et seq. Laws of Indiana As Amended, and For the Repeal of All Ordinances in Conflict Herewith” (Proposed Rezoning of approximately 49.897 acres of land located on the northeast corner of the intersection of East Main Street (a/k/a Rocklane Road) and Combs Road, commonly known as the Rock Lane Properties, LLC Property). Ray Goode represented the petitioner and discussed the commitments. Mr. Goode handed out booklets for the Council to peruse before the next meeting at first reading. Mr. Hardin indicated that the Plan Commission feels this area is a great transition area. **INTRODUCED.**

Under miscellaneous business, Mr. Bless commented that the drive by Pasquale’s is in need of repair. Mayor Henderson said they would call again.

Mr. Bates brought up the “Race for Life” and challenged the Council to be part of this. There are teams from each building. The Council could have its own team or join the City Building team, said the Mayor. Katie White-Knartzer of Human Resources is heading this up. A member of the audience spoke of her participation.

Rick Jones, Chief Information Officer, described the change to the web address to access e-mail: <https://owa.greenwood.in.gov/exchange>. This led to discussion of posting ordinances on the internet as well as the ability to save messages. Council members will contact Mr. Jones with questions.

Director of Operations Norm Gabehart came forward to discuss the possibility of a traffic signal at West Main Street and Averitt Road. Director of Engineering Paul Peoni researched the issue and forwarded a memo with information to Council members. Attached was an estimate from Midwestern Electric, based on the mechanical components for the signal, said Mr. Gabehart. Also included were pictures and a drawing showing location of the necessary equipment for the project. Considering there are right-of-way issues, utility relocations, etc. the minimum cost would probably be \$100,000 mentioned Mr. Gabehart. At this point, the Engineering Department does not feel comfortable with the project without gathering all pertinent information. Mr. Hardin mentioned that the Council had asked for an engineering solution to the traffic backup and had not dictated what they thought was the answer. He said that he had not meant to specifically ask for a traffic signal, although he might have mentioned the possibility as a solution. Mr. Deer mentioned the necessity of a warrant study and questioned whether the intersection had enough volume at this time. The Mayor said he also misunderstood the request and suggested that the analysis be done by a consultant. He asked Mr. Gabehart to check with Mr. Peoni to see if we need a warrant study or rather an engineering study by a consultant as has been done in the past.

Mayor Henderson mentioned a thank you letter from Senator Garton for the Council endorsing the Major Moves program by resolution.

With no further business, the meeting adjourned at 9:40 p.m.

---

Charles E. Henderson, Mayor

---

Jeannine Myers, Clerk-Treasurer